

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-215877**DATE:** November 26, 1984**MATTER OF:** Compucorp**DIGEST:**

Protest against solicitation provisions filed with GAO before the closing date for receipt of proposals, but 3 weeks after issuance of an amendment which did not fully satisfy the protest to the contracting agency, is untimely.

Compucorp protests certain provisions of request for proposals (RFP) F61546-84-R-0426 issued by the USAFE Contracting Center (Air Force), Lindsey Air Station, Wiesbaden, West Germany, for word processors.

Compucorp contends that the RFP should be rewritten to include all appropriate references to the Federal Acquisition Regulation (FAR) and to make it clear that the contract is being negotiated under FAR. Further, Compucorp protests the RFP requirement that data transfer must be completed no later than 45 days after issuance of a delivery order. Finally, Compucorp protests as unduly restrictive the provisions requiring minimum buffer memory of 12KB and that the vendor provided software disc be removable to leave both operating disk drives usable.

We dismiss the protest as untimely.

By letter dated June 8, 1984, Compucorp protested to the contracting agency the issues raised here in addition to a number of others. By amendment No. 0002, effective July 2, 1984, the Air Force changed some of the provisions Compucorp protested in its June 8 letter, but not the provisions protested here. Compucorp's protest here was filed (received) July 24, 1984.

Under section 21.2(a) of the Bid Protest Procedures, 4 C.F.R. part 21 (1984), when a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of formal notification of or actual or constructive notice of initial adverse agency action. While section 21.2(b)(1)

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provides that a protest based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of proposals, we have held that, where a protest of a solicitation defect has been filed with the procuring agency, section 21.1(a) controls. Compucorp, B-211889, June 10, 1983, 83-1 C.P.D. ¶ 644; Polaroid Corporation, B-209753, Dec. 1, 1982, 82-2 C.P.D. ¶ 497.

The Air Force argues that Compucorp's protest to our Office, although filed before the closing date for receipt of proposals, is nonetheless untimely because it was filed more than 10 working days after the receipt of initial adverse agency action (the amendment which did not fully satisfy the protester's complaints). We agree.

Amendment No. 0002 was the initial adverse agency action. See Stadiums Unlimited, Incorporated, B-190573, Dec. 8, 1977, 77-2 C.P.D. ¶ 446, affirmed, Feb. 15, 1978, 78-1 C.P.D. ¶ 133. The record does not indicate the date when Compucorp received the amendment. However, Compucorp has not denied that the protest is untimely. See E. Miltenberg, Inc., B-207346, Nov. 29, 1982, 82-2 C.P.D. ¶ 479. Further, allowing a reasonable time for delivery of the July 2, 1984, amendment, Compucorp's protest filed here July 24, 1984, 3 weeks after the issuance of the amendment, is untimely. Alchemy, Inc., B-208982.2, July 25, 1983, 83-2 C.P.D. ¶ 120; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, B-211916, June 27, 1983, 83-2 C.P.D. ¶ 29; Stadiums Unlimited, Incorporated, B-190573, supra.

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